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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/062,933	01/31/2002	Jude C. Tan	GAME0102JCT	5172

7590 12/07/2004

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7 Woonsocket Ave.
Shelton, CT 06484

EXAMINER

LAYNO, BENJAMIN

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/062,933

Applicant(s)

TAN, JUDE C.

Examiner

Benjamin H. Layno

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2004 and 09 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's arguments filed 06/18/04 have been fully considered but they are not persuasive. The 103 rejections in the first Office action are being maintained.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-7, 10 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foley et al. The Applicant is referred to the description of Foley et al. in the first Office action.

4. In an attempt to overcome Foley's dice, the Applicant replaced the word "dice" with "randomizer", and argued that a "randomizer is not limited to the cube or dice. The randomizer can be spinner, flash cards, a bingo type version.....The applicant's embodiment is more versatile and flexible.". The Examiner takes the position that by replacing the word "dice" with "randomizer", the Applicant actually **broadend** the claims. The term "randomizer" may be broadly interpreted as **including** dice. Thus, Foley's dice is considered a randomizer. It is not necessary for the Foley et al. reference to disclose every type of randomizer in order to meet the claimed "randomizer".

5. Similarly, the Applicant attempted to overcome Foley's mats by replacing the word "bases" with the word "objects". The Applicant argued that "The 3D object used in the game is not limited to using mats for bases for the players to stand on.....It can be 3 dimensional object such as small colored balls that can be picked up and held, small

Art Unit: 3711

flags that stand upright, even objects that can float or sink.....glow in the dark objects.....balloons....". The Examiner takes the position that by replacing the word "bases" with "objects", the Applicant actually **broadend** the claims. The term "objects" may be broadly interpreted as **including** "bases" or "mats". Foley's mats are considered objects. It is not necessary for the Foley et al. reference to disclose every type of object in order to meet the claimed "objects".

6. The Applicant has further argued, that in the claimed invention the objects are randomly distributed or in a patterned method over the play area. It can be distributed without any limitation on distance between other mats or bases. The players do not need to be in constant contact with the game pieces or mats." The Applicant continues "In Foley's embodiment players are limited within the playing patterned mats that must be reachable by the players without losing contact with other mats. Mats must be spaced apart and still permit the limbs of a person to contact them". The Applicant continues "in Foley's configuration the mats cannot be randomly placed on the ground." The Examiner takes the position that the claimed recitation "randomly arranging said objects" in claim 12 is a **broad** recitation. There is no recitation the claims describing exactly how the objects are to be randomly arranged. In Foley's game, each player randomly arranges their four mats on the floor underneath them.

7. The Applicant has further argued "The object of Foley's game is not to touch the playing field on which the mats are placed. If a player loses footing or touch the floor, the team loses. In sharp contrast the object of Applicant's game is to be the last one to be in possession of the object or standing on the game piece which is similar to musical

Art Unit: 3711

chairs. The Examiner takes the position the object of Foley's game is similar to musical chairs in that as the mats are eliminated, the players are eliminated, and the last player standing on a mat still on the ground wins the game, column 3, lines 21-26.

8. Claims 8-11 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foley et al. as applied to claims 1 and 12 above, and further in view of Sieve. The Applicant is referred to the teaching of Sieve in the first Office action.

9. The Applicant has argued the against the Sieve reference individually by stating "Sieves game deals with teaching players basic arithmetic. Numbers must be added in order to get a high number. Since this is so, his game cannot have other graphics or the randomizer. The applicant's holistic game is strictly a visual game which obviates arithmetic. Sieves' game must be played within close proximity from each other such as the dinning table". In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on **combinations of references**. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

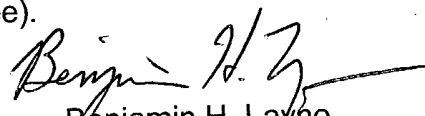
Art Unit: 3711

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin H. Layno whose telephone number is (571) 272-4424. The examiner can normally be reached on Monday-Friday, 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on (571)272-4415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Benjamin H. Layno
Primary Examiner
Art Unit 3711

bhl